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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

OREGON ASSOCIATION OF HOSPITALS  
AND HEALTH SYSTEMS,

Plaintiff,

v.

STATE OF OREGON; OREGON HEALTH  
AUTHORITY; and JAMES SCHROEDER, in  
his official capacity as Director of Oregon  
Health Authority,

Defendants.

Case No. 3:22-cv-01486-SI

DEFENDANTS' ANSWER AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT

Defendants State of Oregon, Oregon Health Authority ("OHA"), and James Schroeder<sup>1</sup>,  
in response to Plaintiff's First Amended Complaint, admit, deny, and allege as follows:

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<sup>1</sup> Defendants, by and through their counsel of record, hereby give notice that, pursuant to FRCP 25(d), James Schroeder, in his official capacity as Interim Director of OHA, is substituted as Defendant in the above-captioned matter for Patrick Allen.

1.

The first two sentences in Paragraph 1 appear to be summarizing and describing unidentified transactions and services of unidentified hospitals and health systems and, if so, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations. Defendants admit the third sentence. Defendants deny the fourth and fifth sentences.

2.

Paragraph 2 contains only legal conclusions, which require no response.

3.

Paragraph 3 contains only legal conclusions, which require no response.

4.

Paragraph 4 contains only legal conclusions, which require no response.

5.

Paragraph 5 contains only legal conclusions, which require no response.

6.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6.

7.

Defendants admit the allegations in the first sentence in Paragraph 7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

8.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences in Paragraph 8. The third sentence is a legal conclusion, which requires no response. Defendants deny the allegations in the third sentence's parenthetical.

9.

Defendants admit the allegations in the first sentence in Paragraph 9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

10.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence in Paragraph 10. The second sentence contains only legal conclusions, which require no response.

11.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11.

12.

Defendants admit the allegations in the first sentence in Paragraph 12. In response to the second sentence, Defendants deny that OHA's Director is a "subdivision of the State." The remainder of the second sentence contains only legal conclusions, which require no response. Defendants deny the allegations in the third sentence.

13.

Paragraph 13 contains only legal conclusions, which require no response.

14.

Paragraph 14 contains only legal conclusions, which require no response.

15.

The first, fifth, sixth, and seventh sentences in Paragraph 15 appear to be summarizing and describing unidentified transactions and services of unidentified hospitals and health care entities and, if so, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations. Defendants admit the allegations in the second, third, and fourth sentences.

16.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16.

17.

Paragraph 17 contains only legal conclusions, which require no response.

18.

Paragraph 18 contains only legal conclusions, which require no response.

19.

In response to Paragraph 19, Defendants admit the allegations in the first sentence. Defendants admit that the proponents of HB 2362 believed Oregon needed new regulations for Oregon's health care marketplace. Plaintiff's description of HB 2362 is a legal conclusion, which requires no response. Defendants admit that Oregon's health care marketplace is a large and important piece of the State's economy that is vital to the health of Oregonians.

20.

Defendants are without knowledge or information sufficient to form a belief about the truth of the allegation in Paragraph 20 regarding the costs imposed on health care entities. Defendants deny the remaining allegations.

21.

To the extent Paragraph 21 describes how OAHHS's members feel affected by HB 2362, Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 21. Otherwise, Paragraph 21 contains only legal conclusions, which require no response.

22.

To the extent that Paragraph 22 purports to describe HB 2362, it contains legal conclusions, which require no response. Defendants are without knowledge or information sufficient to form a belief about the truth of the remaining allegations.

23.

Defendants are without knowledge or information sufficient to form a belief about the truth of the allegation of the first sentence in Paragraph 23. Defendants admit HB 2362 was introduced in the Oregon Legislature in 2021.

24.

Defendants deny the allegations in the first sentence in Paragraph 24. Defendants admit the allegations in the second and third sentences.

25.

Paragraph 25 contains only legal conclusions, which require no response.

26.

Paragraph 26 contains only legal conclusions, which require no response.

27.

Paragraph 27 contains only legal conclusions, which require no response.

28.

The first sentence in Paragraph 28 contains only legal conclusions, which require no response. The second sentence contains legal conclusions, which require no response. Defendants deny the remaining allegations in the second sentence.

29.

In response to Paragraph 29, Defendants admit that HB 2362 is titled the “Equal Access to Care Act.” Defendants deny the remaining allegations in Paragraph 29.

30.

In response to the first sentence in Paragraph 30, Defendants admit that Oregon Association of Hospitals and Health Systems (“OAHHS”) submitted a letter to the Oregon State Legislature’s House Committee on Health Care dated February 9, 2021, regarding HB 2362 (hereafter, “February 9 Letter”). Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence. To the extent the

second sentence purports to describe the February 9 Letter, the February 9 Letter is the best evidence of its contents and speaks for itself. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second sentence. Defendants admit the allegations in the third sentence that HB 2362 passed with 32 votes in the House and 16 in the Senate, and was signed by the Governor. Defendants deny the remaining allegations in the third sentence.

31.

Paragraph 31 contains only legal conclusions, which require no response.

32.

Paragraph 32 contains only legal conclusions, which require no response.

33.

Paragraph 33 contains only legal conclusions, which require no response.

34.

Paragraph 34 and its footnote contain only legal conclusions, which require no response.

35.

Paragraph 35 quotes portions of ORS 415.501(5), which is the best evidence of its contents and speaks for itself. The remainder contains only legal conclusions, which require no response.

36.

Paragraph 36 quotes portions of ORS 415.501(6)(a)–(b), which is the best evidence of its contents and speaks for itself.

37.

Paragraph 37 contains only legal conclusions, which require no response.

38.

Paragraph 38 quotes portions of ORS 415.501(9), which is the best evidence of its contents and speaks for itself. The remainder contains only legal conclusions, which require no response.

39.

Paragraph 39 contains only legal conclusions, which require no response.

40.

Paragraph 40 and its footnote quote portions of ORS 415.501(7), ORS 415.501(11)(b), and HB 2362, which are the best evidence of their contents and speak for themselves. The remainder contains only legal conclusions, which require no response.

41.

Paragraph 41 contains only legal conclusions, which require no response.

42.

Paragraph 42 quotes portions of HB2362, ORS 415.512, ORS 415.501(22), ORS 415.900, and ORS 415.501(14), which are the best evidence of their contents and speak for themselves. The remainder contains only legal conclusions, which require no response.

43.

Defendants deny the allegations in Paragraph 43. The footnote to Paragraph 43 purports to describe OAR 409-070-0030(3), which is the best evidence of its contents and speaks for itself, and contains only legal conclusions, which require no response.

44.

In response to Paragraph 44, Defendants admit that OHA has promulgated rules to effectuate HB 2362 and that it continues to update guidance documents and rules. The remainder of Paragraph 44 contains only legal conclusions, which require no response. Defendants deny any remaining factual allegations.

45.

Paragraph 45 contains only legal conclusions, which require no response.

46.

Paragraph 46 quotes portions of HB 2362 and ORS 415.500(10)(c), which are the best evidence of their contents and speak for themselves.

47.

The first clause of the first sentence in Paragraph 47 contains only legal conclusions, which require no response. Defendants deny the second clause of the first sentence. The second sentence references unidentified guidance documents and rules. Defendants admit that OHA has promulgated rules to effectuate HB 2362. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

48.

The first and third sentences in Paragraph 48 quotes portions of HB 2362, ORS 414.690, ORS 415.500(2), and OAR 409-070-0005(28), which are the best evidence of their contents and speak for themselves. Defendants deny the allegations in the second sentence. The footnote to Paragraph 48 purports to characterize the Health Evidence Review Commission's establishment and some of its duties. To the extent a response to that footnote is required, Defendants admit that the relevant authority governing the establishment of the Health Evidence Review Commission is codified at ORS 414.688 and that its duties include developing a prioritized list of health services as set forth in ORS 414.690. The remainder of Paragraph 48 contains only legal conclusions, which require no response. Defendants deny any remaining factual allegations.

49.

Paragraph 49 contains only legal conclusions, which require no response.

50.

The first sentence in Paragraph 50 quotes a portion of OAR 409-070-0005(17), which is the best evidence of its contents and speaks for itself. Defendants are without knowledge or



information sufficient to form a belief as to the truth of the allegations in the second and third sentence.

51.

Paragraph 51 contains only legal conclusions, which require no response.

52.

Paragraph 52 quotes portions of HB 2362, ORS 415.500(10)(e), and OAR 409-070-0010(1)(e)(A), which are the best evidence of their contents and speak for themselves. Defendants admit that OHA promulgated OAR 409-070-0010(1)(e)(A). The remainder contains only legal conclusions, which require no response.

53.

The first sentence in Paragraph 53 contains only legal conclusions, which require no response. The second sentence purports to describe OHA's January 31, 2022, Health Care Market Oversight Program Sub-regulatory Guidance, available at [HCMO-Essential-Services-and-Significant-Reduction-Guidance-FINAL.pdf \(oregon.gov\)](#), which is the best evidence of its contents and speaks for itself.

54.

Paragraph 54 purports to describe the Health Care Market Oversight Program Sub-regulatory Guidance referenced in Paragraph 53, which is the best evidence of its contents and speaks for itself.

55.

Paragraph 55 purports to describe the Health Care Market Oversight Program Sub-regulatory Guidance referenced in Paragraph 53, which is the best evidence of its contents and speaks for itself.

56.

Paragraph 56 purports to describe the Health Care Market Oversight Program Sub-regulatory Guidance referenced in Paragraph 53, which is the best evidence of its contents and speaks for itself.

57.

Paragraph 57 purports to describe the Health Care Market Oversight Program Sub-regulatory Guidance referenced in Paragraph 53, which is the best evidence of its contents and speaks for itself.

58.

Paragraph 58 contains only legal conclusions, which require no response.

59.

The first sentence in Paragraph 59 appears to be referring to OAR 409-070-0085, which is the best evidence of its contents and speaks for itself. The remainder of Paragraph 59 contains only legal conclusions, which require no response.

60.

Paragraph 60 contains legal conclusions, which require no response. Defendants deny any remaining allegations in Paragraph 60.

61.

Paragraph 61 contains only legal conclusions, which require no response.

62.

In response to Paragraph 62, Defendants admit that OHA has promulgated rules to effectuate HB 2362. The remainder contains only legal conclusions, which require no response.

63.

Paragraph 63 quotes portions of OAR 409-070-0062(1), which is the best evidence of its contents and speaks for itself. The remainder contains only legal conclusions, which require no response.

64.

Paragraph 64 quotes portions of OAR 409-070-0062(1) and (6), which are the best evidence of their contents and speak for themselves. The remainder contains only legal conclusions, which require no response.

65.

Paragraph 65 contains only legal conclusions, which require no response.

66.

Defendants deny the allegations in Paragraph 66.

67.

In response to Paragraph 67, Defendants incorporate the responses to Paragraphs 1 through 66.

68.

The first and fourth sentences in Paragraph 68 contain only legal conclusions, which require no response. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences.

69.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69.

70.

Paragraph 70 contains only legal conclusions, which require no response.

71.

Paragraph 71 purports to describe HB 2362 and ORS 415.900, which are the best evidence of their contents and speak for themselves.

72.

The first three sentences in Paragraph 72 contain only legal conclusions, which require no response. Defendants deny the allegations in the fourth and fifth sentences in Paragraph 72.

73.

Defendants admit the allegations in Paragraph 73.

74.

Defendants deny the allegations in Paragraph 74.

75.

Defendants deny the allegations in Paragraph 75.

76.

In response to Paragraph 76, Defendants incorporate the responses to Paragraphs 1 through 75 by reference as if fully stated herein.

77.

The first and fourth sentences in Paragraph 77 contain only legal conclusions, which require no response. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences.

78.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 78.

79.

Paragraph 79 contains only legal conclusions, which require no response.

80.

The first sentence in Paragraph 80 contains only legal conclusions, which require no response. Defendants deny the allegations in the second sentence.

81.

Paragraph 81 contains only legal conclusions, which require no response.

82.

Paragraph 82 quotes a portion of ORS 415.501(2), which is the best evidence of its contents and speaks for itself. The remainder contains only legal conclusions, which require no response.

83.

Defendants deny the allegations in Paragraph 83.

84.

Defendants deny the allegations in Paragraph 84.

85.

Paragraph 85 contains only legal conclusions, which require no response.

86.

Paragraph 86 contains only legal conclusions, which require no response.

87.

Paragraph 87 contains only legal conclusions, which require no response.

88.

Defendants deny the allegations in Paragraph 88.

89.

In response to the Prayer for Relief, Defendants deny that Plaintiff is entitled to any relief.

90.

Defendants deny any remaining factual allegations.

**FIRST AFFIRMATIVE DEFENSE**

**Failure to State a Claim (Federal)**

91.

Plaintiff's claims for relief fail to state a claim upon which relief may be granted. This defense does not need to be affirmatively pled, and Defendants do so here without adopting the burden of proof.

**SECOND AFFIRMATIVE DEFENSE**

**Failure to State a Claim (State)**

92.

Plaintiff's claims for relief fail to allege ultimate facts sufficient to constitute a claim. This defense does not need to be affirmatively pled, and Defendants do so here without adopting the burden of proof.

DATED January 24, 2023.

Respectfully submitted,

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